

United States
Circuit Court of Appeals
FOR THE NINTH CIRCUIT

WHITLA & NELSON. Petitioner,
v.
SAMUEL L. BOYD, as Trustee in Bankruptcy of
THE LANE LUMBER COMPANY, LIMITED,
a Corporation Bankrupt, and L. C. WILSON,
RECEIVER OF THE STATE BANK
OF COMMERCE, of Wallace, Idaho,
Respondents.

In the Matter of THE LANE LUMBER COMPANY, LIMITED, a Corporation, Involuntary Bankrupt.

On Petition for Revision from the United States
District Court for the District of Idaho,
Northern Division.

BRIEF OF RESPONDENTS.

E. N. LA VEINE,
Attorney for Respondent, Trustee,
Coeur d'Alene, Idaho,
JOHN H. WOURMS,
Attorney for Respondent, State Bank
of Commerce, Wallace, Idaho,

THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT.

WHITLA & NELSON.

Petitioner,

v.

SAMUEL L. BOYD, as Trustee in Bankruptcy of
THE LANE LUMBER COMPANY, LIMITED,
a Corporation Bankrupt, and L. C. WIL-
SON, RECEIVER OF THE STATE BANK
OF COMMERCE, of Wallace, Idaho,

Respondents.

In the Matter of THE LANE LUMBER COM-
PANY, LIMITED, a Corporation, Involuntary
Bankrupt.

On Petition for Revision from the United States
District Court for the District of Idaho,
Northern Division.

Without waiving the special and limited appear-
ance made herein, for the purpose of moving to dis-
miss the petitioner's petition for (review) revision,
the designated respondents submit the following
brief.

STATEMENT OF THE CASE.

Petitioners claim \$2750 for acting as attorneys
for the officers of the Respondent. \$2750 was allow-
ed by the referees, which was reduced to \$385 by the
District Judge. (Trans. p. 56), 206 F. 780.

ARGUMENT.

Petitioners in their brief do not specify the 1st

assignment of error set fourth in their Petition for (review) Revision, which was the only *matter of law* involved herein. (Trans. p. 7).

However, the assignment is discussed and shown not to be well taken in Respondent's MOTION TO DISMISS PETITION FOR (REVIEW) REVISION, pp. 6 to 8 inclusive.

The record before this court is so incomplete that it is an impossibility for this tribunal to intelligently review the decision of the District Judge who had the complete record. (Trans. p. 55), (Brief of Petitioners p. 34).

The record of the evidence in this proceeding has not been stipulated to by the parties, nor settled by the district judge.

Petitioners are asking this court to consider only that portion of the record which is favorable to them. (See Motion, *supra*, pp. 8 to 12.)

Immediately after the insolvency of the bankrupt everything was done by its officers to make it appear as though the real and personal property of the bankrupt was far in excess of its actual value. The schedules prepared by the officers of the bankrupt disclosed its assets to be \$771,201.50. (Brief of Petitioners p. 8.)

During the course of the administration, and as required by the Bankruptcy Act, the trustee filed his

Inventory and subsequently three (3) appraisers were appointed to appraise the real and personal property of the bankrupt. Upon the filing of the appraisers' report the value of the bankrupt's estate was disclosed to be \$217,996.63. (Brief of Petitioner p. 10).

The trustee, feeling that some grave error had crept either into the schedules or into the report, applied to the referee for a hearing, after notice to the creditors, for the purpose of examining the officers of the bankrupt and the appraisers in order to enable the referee to intelligently approve or disapprove the report and discharge the appraisers.

The hearing was had on the 3rd day of January, 1912. The appraisers proved conclusively that the true value of the bankrupt's real and and personal property was \$217,996 63. It will be observed, as an absolute and indisputable fact, *that none of the officers of the bankrupt requested to nor did they place any witnesses on the stand to prove that the value of the assets of the bankrupt were \$771,201.50, as disclosed by the bankrupt's schedules.* The referee approved the appraisers' report after the hearing.

Counsel have used considerable space in explaining to the court the complicated condition for the affairs of the Lane Lumber Company.

Several examinations were held for the purpose

of getting reliable information from the officers of the bankrupt. Repeatedly, instead of answering the questions propounded to them, the officers would either say that they did not know or that they had forgotten.

In the matter of determining the correctness of the allowance of \$2750 to the attorneys of the bankrupt, we contend that the *creditors and this court are entitled to a complete and accurate record.*

In our petition to review the order of the referee allowing \$2750. we state, paragraph six (6), (Trans. p. 46), "that the record in this proceeding shows that the attorneys for the bankrupt did not appear and take part in the hearing of this proceeding thirty-seven (37) days; that on the following dates, for which \$50 per day was allowed, no hearing or meeting of creditors was had and no appearance made by said attorneys on behalf of said bankrupt, to-wit:

August 26, 1911 5 days;

October 10, 1911 1 day;

January, 12, 1912..... 1 day;

February 27, 1912..... 1 day;

May 2, 1912 1 day;

July 16, 1912 1 day;

November 25, 1912..... 1 day;

Total..... 11 days."

The trustee in his brief before the District Judge, who had the complete record of the proceedings, which were had before the referee, said:

"In order to prove to the court that my statement is correct I want to make reference to the record.

Aug. 26, 1911,	1st meeting	9-7-11.	Record p.	1
Oct. 10, 1911,	Convened on	9-27-11	Record p.	179
	Adjourned to	10-23-11	Record p.	181
	Convened on	10-23-11	Record p.	182
Jan. 12, 1912,	Convened on	1-13-12	Record p.	600
	Adjourned to	2-12-12	Record p.	710
	Convened on	2-12-12	Record p.	710
Feb. 27, 1912,	Convened on	2-24-12	Record p.	767
	Adjourned to	4-10-12	Record p.	792
	Convened on	4-10-12	Record p.	793
May 2, 1912,	No appearance		Record p.	808
July 16, 1912,	Convened on	7-15-12	Record p.	1183
	Adjourned to	7-26-12	Record p.	1194
	Convened on	7-26-12	Record p.	1195
Nov. 25, 1912	No hearing had from Nov. 12, 1912, to March 26, 1913, pp. 1466-1467."			

Naturally this court is interested in ascertaining the customary amount of fees which have been allowed by Federal Courts for similar services and the grounds upon which they were predicated.

In *re* Curtis et al, decided by the Circuit Court

of Appeals in 1900, 100 F. 784, 41 C. C. A. 59, contains an able discussion on attorney's fees. It was in this decision that the court said:

"It becomes us, therefore, to inquire with respect to the matter in hand concerning the character and value of the service rendered, and of the grounds upon which the allowance was predicated. The elements which enter into and should control judgment upon the value of professional services we think to be these: *The nature of the services, the time necessarily employed therein, the amount involved, the responsibility assumed, and the result obtained.*"

CUSTOMARY ALLOWANCE FOR DRAFTING SCHEDULES FROM \$25 to \$50.

In re Meyer 101 F. 695, 697 (D. C. E. D. W.)

In re O'Hara 166 F. 384 (D. C. M. D. Pa.)

In re Christianson 175 F. 867, 869 (D. C. N. D.)

CLERICAL WORK.

In re Connell & Sons 120 F. 846, (D. C. N. D. Pa.)

CUSTOMARY ALLOWANCE FOR ATTEN- DANCE IN BANKRUPTCY COURT, WHEN PERFORMING DUTIES, UNDER THE BANKRUPTCY ACT, IS FROM \$10 TO \$25 PER DAY.

In re Meyer 101 F. 695, 697 (D. C. E. D. W.)

In re Christianson 175 F. 867, 869, (D. C. N. D.)

In the following table we have tabulated all the

obtainable cases showing the FEES CLAIMED
AND AMOUNT ALLOWED, AND FEES DIS-
ALLOWED BANKRUPT'S ATTORNEYS.

Claimed:	Allowed:
\$ 250.00	\$ 50.00 in re Beck 92 F. 889, 893 (D. C. S. D. Iowa E. D.)
75.00	\$ 25.00 In re Carolina Cooperage Co. 96 F. 950 (D. C. E. D. N C.)
250.00	100.00 In re Burrus 97 F. 926, 927 (D. C. W. D. Va.)
90.00	90.00 In re Anderson 103 F. 854, 859 (D. C. D. S. C.)
524.00	271.00 In re Brundin 112 F. 306 (D. C. D. M. S. D.)
150.00	100 00 In re Connell & Sons 120 F. 846 (D. C. M. D. Pa.)
3000.00	200.00 In re Goldville Mfg. Co. 123 F. 579, 586 (D. C. S. C.)
150.00	75.00 In re Lang 127 F. 755 (D. C. W. D. T.)
250.00	50.00 In re Covington 132 F. 884 (D. C. E. D. N. C.)
600.00	50.00 In re Felson 139 F. 275, 280 (D. C. N. D. N. Y.)
150.00	50.00 In re Christianson 175 F. 867 (D. C. D. N. C.)

50.00 In re Stratmeyer

14 A. B. R. 120 (D. C. H. I.)

50.00 In re Kross

96 F. 816 (D. C. S. D. N. Y.)

50.00 In re Smith

108 F. 39, 41 (D. C. E. D. N. C.)

75.00 In re Ellett Electric Co.

196 F. 400 (D. C. W. D. N. Y.)

DISALLOWED.

In re Woodward 95 F. 955, 956 (D. C. E. D. N. C.)

In re O'Connell 98 F. 83 (D. C. S. D. N. Y.)

In re Terrill 103 F. 781 (D. C. D. V.)

In re Rosenthal &

Leham 120 F. 848 (D. C. E. D. Mo. E. D.)

In re Linden & Bro

v. Smith 135 F. 43 (C. C. A. 5th C.)

NOW AS TO THE ATTENDANCE BY BANK-
RUPT'S ATTORNEYS.

"Ordinarily I cannot regard attendance by counsel for bankrupt at all the various examinations as necessary. The restraints on discharge being confined to acts either criminal or most plainly fraudulent and wrong, the honest and straightforward debtor has rarely need of 'counsel,' unless falsely attacked, when professional aid may become proper and necessary, and should then be compensated. *There is often, however, too much interference and ob-*

jections by the bankrupt's attorneys in the ordinary examinations in behalf of creditors, which operates in every way injuriously."

In re Kross 96 F. 816-819 (D. C. S. D. N. Y.)

The allowance made by the referee to the attorneys for the bankrupt when learned of by the attorney for the trustee caused him to commence to scrutinize the allowance. As far as the services rendered by bankrupt's attorneys are concerned they are devoid of any complexity or unusual intricacies of practice. For preparing the schedules and attending hearings in the bankruptcy court the attorneys for the bankrupt want a fee of \$2750. Lack of experience is the only thing which would prompt a lawyer to seriously insist upon such an enormous, inordinate and outrageous allowance for the services rendered. The District Judge allowed \$385.

We respectfully submit that the decision of the District Judge should be affirmed.

E. N. LAVEINE,
Attorney for Respondent, Samuel
L. Boyd, Trustee,
Coeur d'Alene, Idaho.

JOHN H. WOURMS,
Attorney for Respondent, State
Bank of Commerce,
Wallace, Idaho.

Copy of foregoing brief received this.....day
of February, 1914.

.....
Attorney for Petitioner.